

## PROFESSIONAL/PERSONAL SERVICES CONTRACT

This Contract ("this Contract"), entered into by and between the **Office of the Indiana Attorney General** (the "State") and **Affiliated Computer Systems, Inc. dba ACS Unclaimed Property Clearinghouse** (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

- 1. Duties of Contractor.** The Contractor shall **perform** audits of corporate records to identify unclaimed property reportable to the State of Indiana. The duties of **Contractor** are more fully described in Exhibit A (RFP #05-1) and Exhibit B (Contractor's proposal) which are attached hereto and incorporated herein.
- 2. Consideration.** Consideration is based upon the amount of unclaimed property received by the State due to Contractor's efforts. Contractor **shall receive** twelve and one half percent (12.5%) of the gross amount remitted to the State, as is **more** fully set forth in Exhibit **A** (RFP #05-1) and Exhibit B (Contractor's proposal), which are attached **hereto** and incorporated herein. Total remuneration is contingent upon the amount of unclaimed property reported.
- 3. Term.** This Contract shall commence on September 1, 2005 and shall remain in effect through December 31, 2008.
- 4. Access to Records.** The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence **pertaining to** all costs incurred under this Contract. They shall make such materials, except for confidential cost and pricing data, available at their respective offices at all reasonable times during this Contract **term**, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.
- 5. Assignment; Successors.** The Contractor binds its successors and assignees to all the **terms** and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent, which will not be unreasonably withheld. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.
- 6. Audits.** Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.
- 7. Authority to Bind Contractor.** The signatory for the Contractor represents that **he/she** has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when **his/her** signature is affixed, and certifies that this Contract is not subject to further acceptance by Contractor when accepted by the State.
- 8. Changes in Work.** The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

## 9. Compliance **with** Laws

A. The **Contractor** shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder **after** execution of this Contract shall be **reviewed** by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements **that** apply to persons who have a business relationship with **the** State, as set forth in Indiana Code § 4-2-6 **et seq.**, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the State Ethics **Commission**, or visit the State Ethics Commission **website** at <<<<http://www.in.gov/ethics/>>>>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the contractor. In addition, the Contractor may be subject to penalties under Indiana Code § **4-2-6-12**.

C. The **Contractor** certifies by entering into this Contract, that neither it nor its **principal(s)** is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any **payments** currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied **and/or** this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately **notify** the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under this Contract and any supplements or amendments.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as **comply** with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

H. The Contractor affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

I. Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State, and, if such liabilities are discovered, that State may bar Contractor **from** contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the Contractor is current in its payments on its liability to the State and has submitted proof of such payment to the State. The State shall provide reasonable, prior written notice of

its intent to withhold or setoff any payment and that any withhold or setoff will be released to the extent the deficiency is cured.

J. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de **minimis** and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [**Regulation of Automatic Dialing Machines**] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an **affiliate** or principal of the Contractor: (A) except for de **minimis** and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) **will** not violate the terms of IC 24-4.7 for the duration of the **Contract**, even if IC **24-4.7** is preempted by federal law.

10. **Condition of Payment.** **All** services provided by the Contractor under this Contract must be performed to **the** State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, **state**, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state, or local statute, ordinance, rule or regulation.

11. **Ownership of Documents and Materials.** **All** documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed **or** licensed **by** the Contractor prior to execution of this Contract, but specifically developed under **this** Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the **Contractor**, without the prior **written** consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State. Notwithstanding the above, **Contractor** shall retain title to any and all of its patents, copyrights, trademarks and proprietary **and/or** confidential information, data, **documents**, **software**, trade secrets, know-how-, techniques, updates, and revisions thereof (collectively called "Contractor Proprietary Information") utilized in the performance of this contract.

12. **Confidentiality of State Information.** The Contractor understands and agrees that data, materials, and **information** disclosed to **Contractor** may contain confidential and protected data. The Contractor covenants that confidential **and/or** proprietary data, material, and information gathered, based upon, or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior **written** consent of the State.

13. **Conflict of Interest.**

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing this Contract;

2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
  3. Any member of the immediate family of an individual specified under subdivision 1 or 2.
- "Department" means the Indiana Department of Administration.  
"Commission" means the State Ethics Commission.

- B. The Department ~~may~~ cancel this Contract without recourse by Contractor if any interested party is an employee of the State.
- C. The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of the interested party does not violate any statute or rule relating to ethical conduct of State **employees**. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.
- D. Contractor has an **affirmative** obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

14. Continuity of Services.

- A. The Contractor **recognizes** that the **service(s)** to be **performed** under this Contract are vital to the State and must be continued without **interruption** and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
1. Furnish phase-in training, and
  2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
1. Furnish phase-in, phase-out services for up to sixty (60) days **after** this Contract expires, and
  2. Yegotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The **Contractor** shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. To the extent allowed by State and Federal privacy laws, the Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (**i.e.**, costs incurred within the agreed period **after** contract expiration that result **from** phase-in, phase-out operations).

15. Debarment and Suspension.

- A. The Contractor certifies, by entering into this Contract, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The **term** "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or

supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B The Contractor certifies that it has verified the suspension and **debarment** status for all sub-contractors receiving funds under this Contract and shall be solely responsible for any **paybacks** and or penalties that might arise from **non-compliance**. Contractor shall immediately **notify** the State if any sub-contractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate work done by the sub-contractor pursuant to this Contract.

**16. Default by State.** If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Contract, then the Contractor may cancel and terminate this Contract and collect all monies due up to and including the date of termination.

**17. Disputes.**

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to **carry** out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

1. The parties agree to resolve such **matters** through **submission of their** dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a **copy** thereof to the Contractor and the State within ten (10) working days **after** presentation of such dispute for action. The **Commissioner's** decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the **Commissioner's** decision, a **written** appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the **terms** of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

**18. Drug-Free Workplace Certification.** The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the Contractor's workplace.

False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract **and/or** debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby **further** agrees that this contract is expressly subject to the **terms**, conditions, and representations of the following certification:

This certification is required by Executive **Order No. 90-5**, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and **grants** from the State in excess of **\$25,000.00**. No award of a contract shall be made, and no **contract**, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been **fully** executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the **unlawful** manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice **from** an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of **drug** abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to **maintain** a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**19. Employment Option.** If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

**20. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all **obligations** under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**21. Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or **otherwise** available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**22. Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**23. Indemnification.** The Contractor agrees to indemnify, defend, and hold **harmless** the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall **not** provide such indemnification to the Contractor.

**24. Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall **not** be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

**25. Licensing Standards.** The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to pay the Contractor for any services **performed** when the Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, **rules** or regulations. If **licensure**, certification or accreditation expires or is revoked, the Contractor shall notify State immediately and the State, at its option, may immediately **terminate** this Contract.

**26. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by **written agreement** signed by all necessary parties.

27. Minority and Women Business Enterprise Compliance. The Contractor agrees to comply fully with the provisions of the Contractor's MBE/WBE participation plan.

28. Nondiscrimination. Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, **sex**, disability, national origin or ancestry. Breach of this covenant may be regarded as a **material** breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal **laws**, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

29. **Notice** to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall **be** sent to:

Larry **Hopkins**, Chief Administrative **Officer**  
Office of the Attorney General  
State House **219**  
Indianapolis, IN **46204**

B. Notices to the Contractor shall be **sent** to:

Affiliated Computer Services, **Inc.**  
dba ACS Unclaimed Property **Clearinghouse**  
**260** Franklin Street, **11<sup>th</sup>** Floor  
Boston, MA **02110**  
Attn: Lynden Lyman, President

C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by Contractor with the Auditor of State.

30. Payments. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific **waiver** has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as **permitted** by IC 4-13-2-20.

31. **Penalties/Interest/Attorney's Fees**. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting **from** the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on **funding** from federal or other sources.

32. Progress Reports. The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written **form**. The progress reports shall serve the purpose of assuring the State that work is



progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**33. Renewal Option.** This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

**34. Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**35. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**36. Taxes.** The State is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**37. Termination for Convenience.** This Contract may be **terminated**, in whole or in part, by either party whenever, for any reason, the party determines that such termination is in its best interest. Termination of services shall be effected by delivery of a Termination Notice to the other party at least thirty (30) days prior to the **termination** effective date, specifying the extent to which **performance** of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original **termination** date.

**38. Termination for Default**

A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any material breach of this Contract;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall **agree** on the amount of payment for manufacturing **materials** delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

E. For the purposes of this section, "material breach" is defined as any breach that results in a reduction in the value of this Contract to the State that is **more** than de minimis.

39. Travel. No expenses for travel will be reimbursed unless specifically permitted under the scope of **services** or consideration provisions. Expenditures made by the Contractor for travel **will** be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of **funds** and for appropriateness per Circular guidelines.

40. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right.

41. Work Standards. The **Contractor** shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State **may** request in writing the replacement of any or all such individuals, and Contractor shall grant such request.

42. Mutual Limitation of Liability. Except for fees owed by the State to the Contractor for services rendered or for breach of a party's confidentiality or intellectual property obligations, a party's liability to the other party, whether in contract (including, but not limited to, indemnification liability), tort, or **otherwise** shall not exceed **\$1** million, and neither party shall be liable to the other party for indirect, special, incidental, consequential, or punitive damages.

### Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**In Witness Whereof**, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

#### ACS Unclaimed Property Clearinghouse:

By: [Signature]  
Printed Name: Lynden Lyman  
Title: Managing Director  
Date: October 14, 2005

#### Office of the Indiana Attorney General:

By: [Signature]  
Printed Name: Larry Hopkins  
Title: CAO  
Date: 10-18-05

#### Department of Administration

[Signature] (for)  
Earl A. Goode, Commissioner  
Date: 10-20-05

#### State Budget Agency

[Signature] (for)  
Charles Schalliol, Director  
Date: 10/20/2005

#### Approved as to Form and Legality: Office of the Attorney General

[Signature] (for)  
Stephen Carter, Attorney General  
Date: 10-24-05